

## INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE JUDITH C. McCARTHY

Cases come before Magistrate Judges in one of two ways: for one or more specific purposes pursuant to an Order of Reference by the assigned District Judge, or, on consent of the parties, for all purposes pursuant to 28 U.S.C. § 636(c). When a District Judge approves an all-purposes consent form signed by counsel, the Magistrate Judge assumes the role of the District Judge. Any appeal is directly to the Second Circuit Court of Appeals, and the right to a jury trial is preserved.

It is the uniform practice of the Magistrate Judges in this District to schedule trials in civil consent cases for firm dates, rather than using a trailing trial calendar or requiring counsel to be available for trial on short notice. Additionally, because Magistrate Judges rarely try criminal cases, such firm trial dates are unlikely to be changed to accommodate criminal trials. If counsel wish to have Judge McCarthy hear their case for all purposes, the necessary form is available at <http://nysd.uscourts.gov/file/forms/consent-to-proceed-before-us-magistrate-judge>.

Unless otherwise ordered by Judge McCarthy, matters before her shall be conducted in accordance with the following practices. These practices are applicable to matters before Judge McCarthy if the matter is within the scope of the District Judge's Order of Reference or if the case is before Judge McCarthy for all purposes pursuant to 28 U.S.C. § 636(c). Otherwise, the practices of the District Judge to whom the case is assigned apply.

### 1. Communications With Chambers

**A. Letters.** Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Copies of correspondence between counsel shall **not** be sent to the Court. Unless there is a request to file a letter under seal, or a letter contains confidential information, letters should be filed on ECF. Letters containing confidential information, such as *ex parte* settlement letters, should be delivered to the Court by mail, email at McCarthy\_NYSDChambers@nysd.uscourts.gov, or hand delivery, and such letters must be visibly designated as "NOT FILED VIA ECF DUE TO CONFIDENTIAL CONTENT." Whether filed on ECF or not, letters on subjects other than discovery disputes may not exceed 5 pages, exclusive of exhibits, unless prior permission is received from the Court. Letters on discovery disputes are limited in length by the discovery order issued in the case. Responsive letters must be filed on ECF in accordance with these rules, and must identify by docket entry number which letter is being responded to. Courtesy copies, as set forth in Paragraph 2(B), *infra*, must be provided for all letters in excess of 10 pages, inclusive of exhibits. *In the event such a letter filed on ECF requires immediate attention, counsel shall contact chambers by telephone to alert the Court of the filing.*

**B. Sealing Requests.** Any party seeking to file a document under seal, excluding *ex parte* settlement letters, must electronically submit an application to the Court setting forth the reasons for such request. Any objections must be filed within five (5) business days of the application. The Court may request to review *in camera* the document(s) sought to be sealed. No document may be filed under seal without a Court Order permitting the same.

**C. Telephone Calls.** Telephone calls to chambers are permitted. The phone number is (914) 390-4124.

**D. Faxes.** Faxes are *not* permitted without prior approval of Chambers. If granted, the fax must not exceed five (5) pages. If you are granted permission to send a fax, do not follow up with a hard copy. Copies of faxed submissions must be simultaneously sent, by fax or e-mail, to all other counsel.

**E. Docketing, Scheduling, and Calendaring Matters.** For docketing, scheduling and calendaring matters, call the Courtroom Deputy at (914) 390-4124 between 9:00 a.m. and 5:00 p.m. If the request is for an adjournment of a court appearance, absent an emergency, it shall be made at least 48 hours prior to the scheduled appearance.

**F. Requests for Adjournments or Extensions of Time for Filing of Papers.** All requests for adjournments or extensions of time with regard to filing deadlines must be made in writing and filed on ECF as letter-motions. (If a request is to be filed under seal or contains confidential information, it may be submitted as set forth in Paragraph 1(A)-(B), *supra*). The letter-motion must state: (1) the original due date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order (reflecting only business days) must be attached. Parties seeking adjournments or extensions of time within 48 hours of a scheduled Court conference or deadline expiring, or for any other urgent request, shall contact chambers by telephone to alert the Court of the filing.

## **2. Motions**

**A. Pre-Motion Conferences in Civil Cases.** For discovery motions, follow Local Civil Rule 37.2. For motions other than discovery motions, the moving party shall submit a letter via ECF, not to exceed three pages in length, setting forth the basis for the anticipated motion. The opposing party shall submit a response via ECF, not to exceed three pages in length, within 5 business days from the date the moving party's letter was filed. The Court will notify the parties if a pre-motion conference is required. A pre-motion conference with the court is required before making a motion for summary judgment. To arrange a pre-motion conference, the moving party shall submit a letter not to exceed three pages in length setting forth the basis for the anticipated motion.

**B. Courtesy Copies.** Courtesy copies of all motion papers, marked as such, shall be submitted to chambers at the time the papers are served. They must be securely bound and tabbed. For those parties permitted to file documents on ECF, all courtesy copies must bear proof of electronic filing.

**C. Memoranda of Law.** Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.

**D. Filing of Motion Papers.** Motion papers shall be filed promptly after service.

**E. Oral Argument on Motions.** Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

### **3. Pretrial Procedures**

**A. Joint Pretrial Orders in Civil Cases.** Pretrial orders are not required unless specifically directed by the Court in a particular case. Joint Pretrial orders shall include:

- i. Proposed witnesses and exhibits, pursuant to Federal Rules of Civil Procedure 26(a)(3)(A)(i)-(iii);
- ii. Objections, if any, to proposed witnesses and exhibits;
- iii. Any stipulations to facts, witnesses or exhibits;
- iv. witness availability, if any issues are anticipated;
- v. whether any party intends to include deposition testimony or video testimony in lieu of live trial testimony;
- vi. anticipated electronic equipment required and whether the Court needs to issue an order permitting such equipment into the courthouse; and
- vii. anticipated motions *in limine* without going into the merits of the same (*e.g.*, plaintiff will move to prohibit “x”).

**B. Filings Prior to Trial in Civil Cases.** Unless otherwise ordered by the Court, each party shall file, 30 days before the date of commencement of trial:

- i. In all cases, complete witness lists in accordance with Federal Rule of Civil Procedure 26(a)(3)(A)(i) and (ii); and
- ii. In all cases, complete exhibit lists in accordance with Federal Rule of Civil Procedure 26(a)(3)(A)(iii).

Unless otherwise ordered by the Court, each party shall file on ECF, 15 days before the commencement of trial,

- i. In jury cases, requests to charge, proposed *voir dire* questions, and a proposed verdict sheet;
- ii. In nonjury cases, a statement of the elements of each claim or defense involving each party, together with proposed findings of fact and conclusions of law;
- iii. In all cases, any objections to a party’s witness and/or exhibit lists, in accordance with Federal Rules of Civil Procedure 26(a)(3)(B);
- iv. In all cases, motions addressing any evidentiary or other issues which should be resolved *in limine* (any responses to motions *in limine* shall be filed no later than 7 days before trial); and
- iv. In any case where such party believes it would be useful, a pretrial memorandum.

Unless otherwise ordered by the Court, each party shall provide courtesy copies of the items identified in i and ii immediately above to Judge McCarthy's chambers by e-mailing it, in Word format, to McCarthy\_NYSDChambers@nysd.uscourts.gov.

**4. Inclement Weather or Other Emergency**

White Plains Courthouse delays or closures are announced by 6:00 am. Call (914) 390-4220 to hear a recorded message. In the event of severe weather conditions when the Courthouse is open, counsel with scheduled appearances should call chambers to confirm that Judge McCarthy is holding court.

**5. Forms**

Many commonly used forms (*i.e.*, notice of appearance, consent to Magistrate Judge jurisdiction) are available at: <http://www.uscourts.gov/FormsAndFees/Forms/CourtForms.aspx>.